

(2014) 02 JH CK 0046

Jharkhand High Court

Case No: W.P.(S) Nos. 66, 68 and 77 of 2014

Amrendra Kumar

APPELLANT

Vs

Ranchi Regional Development
Authority

RESPONDENT

Date of Decision: Feb. 18, 2014

Citation: (2014) 4 AJR 549

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Himanshu Kumar Mehta, Manjusri Patra, Kanchan Kumari and Tapan Mahto,
Advocate for the Appellant; Ashish Kumar Shekhar and Prashant Kumar Singh, Advocate
for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. By the common impugned order at Annexure-3 in W.P.(S) No. 66/14 and also at Annexures-3 and 4 in the other respective writ petitions, the services of the petitioners, who claim to be the employees of the Ranchi Regional Development Authority have been placed under the Directorate of Municipal Administration, Urban Development Department, Jharkhand, Ranchi, and they have been directed to be relieved w.e.f. 31st December, 2013. During the pendency of the writ applications, the representations of the petitioners have also been rejected vide order dated 11th January, 2014 which were allowed to be challenged by an earlier order dated 24th January, 2014 and are assailed as such.

2. It is the contention of these petitioners that they are employees of the Ranchi Regional Development Authority (In short R.R.D.A.), whose services could not have been placed on deputation to foreign service like Directorate of Municipal Administration in the Urban Development Department, Jharkhand, Ranchi, without

their consent, as it is in the teeth of Rule 267(a) of the Jharkhand Service Code, which governs the condition of employment of these petitioners. The petitioners' other contention is that R.R.D.A. being an autonomous organization, the services of the petitioners could not have been handed over to the Urban Development Department in such an arbitrary and illegal manner. The petitioners are also under the apprehension as to the service benefits which would be available to them pursuant to their placement under the Directorate of Municipal Administration in the Urban Development Department, Jharkhand, Ranchi.

3. Learned counsel for the petitioners has relied upon the judgments of the Hon'ble Supreme Court rendered in the cases of [Umapati Choudhary Vs. State of Bihar and Another, : State of Punjab and Others Vs. Inder Singh and Others](#), to advance the submission that the petitioners' service could not be deputed without their consent in a Foreign Department.

4. Learned counsel for the Respondent - R.R.D.A. has, on the other hand, submitted that these petitioner have been placed under the Directorate of Municipal Administration, a wing of Urban Development Department, Govt. of Jharkhand from 1st January, 2014 onwards. Their pay and allowances will be paid by Ranchi Regional Development Authority (R.R.D.A.) the deputation of these petitioners have been made due to shortage of staff in the concerned State Government Office, for which a request was also made on 21st November, 2013 to Ranchi Regional Development Authority. The petitioners have not been transferred but only deputed in the said office. It has been contended that instead of submitting their joining these petitioners have proceeded on leave. The other person covered under the same impugned notification and who has not challenged the same has already joined and is working on the deputed place in compliance of the said order.

5. It is contention of the respondents that there are no specific service Rule for R.R.D.A. employees and the service condition of the employees are being governed by the Bihar Service Code (now Jharkhand Service Code) and Regional Development Authority Act, 2001. In relation to the contention of the petitioners reliance on Rule 267, the respondent have taken a stand that these petitioners have not been transferred rather their services have been placed on deputation with the office of the State Government.

6. Learned counsel for the Respondents-R.R.D.A., therefore, submits that in the aforesaid background their representation have also been considered and rejected and they have been directed to hand over charge of R.R.D.A. works and join on the deputed place which they have not done till date.

7. Supplementary counter affidavit has been filed on behalf of wherein it has been stated that earlier also persons employed in the R.R.D.A. have been deputed to the other wing of Urban Development Department, Government of Jharkhand. One such office order No. 127/2008 under letter No. 1516 dated 17th December, 2008,

have been annexed to the supplementary counter affidavit.

8. I have heard learned counsel for the parties and gone through the relevant materials on record.

9. From perusal of the common impugned order, which is Annexure-3 in W.P.(S) No. 66 of 2014, it appears that the services of the petitioners have been placed till further orders under the Directorate of Municipal Administration, Urban Development Department, Govt. of Jharkhand, Ranchi.

10. Learned counsel for the petitioners submits that the petitioners otherwise are the employees of Ranchi Regional Development Authority. The petitioners have tried to make out a case that under the service condition contained in the Jharkhand Service Code, which applies to them, especially Rule 267(a) there is a bar for such transfer. In view of Rule 267(a) their services could not have been deputed to the Urban Development Department without their consent. Rule 267(a) is quoted hereunder:

"Rule 267(a): No Government servant may be transferred to foreign service without his consent:

Provided that this sub-rule shall not apply to the transfer of, a Government servant to the service of a body incorporated or not which is wholly or substantially owned or controlled by the State Government, or by the Government of India, when the body operates or would operate in Bihar even though its head quarters may be outside the State."

11. The proviso to the aforesaid Rule states that this sub-rule shall not apply to the transfer of a Government servant to the service of a body incorporated or not which is wholly or substantially owned or controlled by the State Government, or by the Government of India, when the body operates or would operate in Jharkhand even though its headquarters may be outside the State.

12. The Bihar Regional Development Authority Act, 1981 is the Parent Act under which R.R.D.A. Act has been constituted. The said Act has also been adopted by the successor State of Jharkhand as well. In exercise of the provisions of Section 3 of the said Act, the State Government constitutes the Regional Development Authority bearing the name of that Region by notification published in the official Gazette for the purposes of this Act. The authority so created is a body corporate. It therefore cannot be disputed that R.R.D.A. is a body corporate which has been constituted by the State Government and is owned or substantially controlled by the Government of Jharkhand.

13. The constitution of the authority under Section 3 of sub-section (3), indicates that the Chairman of the authority shall be the Minister of the Urban Development Department of the State of Jharkhand or any person nominated by the State Government. The Vice Chairman is also to be appointed by the State Government.

The other member such as planning Member shall also be the Chief Town Planner, Jharkhand, or his nominee to be nominated by the State Government. Two other persons to be nominated by the State Government of whom one shall be a person of administrative or technical experience and the other shall be a social scientist. Administrator/Chief Executive of the Municipal Corporation shall also be a member of the said Regional Development Authority R.R.D.A. in the instant case. The other members who constitute the authority as indicated in Section 3, sub-section (3)(i) are shown to be the Collector or Deputy Development Commissioner-cum-Chief Executive Officer of the District, to be nominated by the State Government. The Chief Engineer of the Public Health Engineering Department or his nominee, Chief Engineer of the Public Works Department or his nominee are also its members. As per Section 3(3)(1) the Secretary, Urban Development Department or his nominee shall also be a member of the Authority. The Vice-Chairman shall be a whole-time Government servant. It therefore cannot be disputed that the authority is a body corporate which is wholly controlled by the Government of Jharkhand, though it is constituted under the Regional Development Authority Act. It is also true as it appears from the stand of the Respondents-R.R.D.A. and accepted by the petitioner that the provisions of the Jharkhand Service Code applies to the employees of R.R.D.A.

14. The proviso to Rule 267(a) if read in the context of R.R.D.A., therefore, clearly would be held to mean that in a case when an employee of R.R.D.A. is transferred to the State Government no consent of the employee is required in terms of Rule 267(a) as R.R.D.A. is a body incorporated wholly or substantially owned or controlled by the State Government.

15. The contention of the petitioners that their services could not have been placed under the Urban Development Department without their consent, therefore, has to be rejected.

16. In a similar circumstance, in the case of deputation of a Government servant to the Mineral Area Development Authority, the provisions of Rule 267(a) were raised and considered by this Court in the case of Indranarayan Jha v. State of Jharkhand & Anr., reported in (2005) 4 JCR 256 (Jhr). Learned single Judge while considering the main plea taken on behalf of the said petitioner challenging his deputation on the ground that it amounted to transfer to foreign service, which could not have been done without the consent of the employee, as required under Rule 267(a), Jharkhand Service Code, held as follows:

"2. The main plea taken on behalf of the petitioner is that deputation of petitioner in MADA amounts to transfer to Foreign Service, which cannot be done without the consent of the employee, as required under Rule 267(a) of Jharkhand Service Code. It is submitted that the respondents have not taken any consent from petitioner before deputation to Foreign Service.

3. To determine the issue, it is necessary to notice Rule 267(a) of the Jharkhand Service Code, as quoted hereunder:

No Government servant may be transferred to foreign service without his consent:

Provided that this sub-rule shall not apply to the transfer of, a Government servant to the service of a body incorporated or not which is wholly or substantially owned or controlled by the State Government, or by the Government of India, when the body operates or would operate in Bihar even though its head quarters may be outside the State.

4. In this case, it has not been disputed that MADA is a body corporate and is wholly owned and controlled by the Government of Jharkhand. In the circumstances, as per proviso to Rule 267(a) of the Service Code, it was not necessary for the respondents to obtain consent services of petitioner under MADA."

17. The Mineral Area Development Authority is also a body corporate created under the Bihar Mineral Area Development Authority Act, 1986, by notification of the State Government notified in similar manner and the members constituting the authority are also nominated by the State Government.

18. The provisions of the B.R.D.A. Act, 1981 as adopted by the State of Jharkhand such as Section 6, which relate to the staff of the authority also indicate that the Authority shall have a Secretary, to be appointed by the State Government, who shall exercise such powers and perform such duties as may be prescribed by regulations or delegated to them by the Authority.

19. Section 6(2) of the said Act further provides that the Authority may, subject to such control and restriction as may be prescribed by rules approved by the Government appoint such number of other officers and employees as may be necessary for the efficient performance of its functions. Such Secretary, and other officers and employees of the Authority are to be governed by such conditions of service as may be determined by regulations. It also provides that appointments to certain posts with minimum salary of Rs. 500 shall be made on the advice of the Public Service Commission. As indicated earlier the service condition of the employees of RRDA are said to be governed by the provisions of Jharkhand Service Code.

20. The other provisions of the Act of 1981 also indicate"s the substantial control of the State Government over the authority created under the Act. The State Government has also been conferred the power to frame Rules to carry out the purposes of the Act. It also has got the power to dissolve the authority under Section 92 of the Act.

21. The aforesaid discussions made hereinabove in relation to the constitution of the authority under the Act of 1981, therefore, no leaves no room of doubt that it is a body corporate which is wholly or substantially controlled by the State

Government. Therefore, the reliance of the petitioners on Rule 267(a) is wholly misplaced. Apart from the above, the pay and emoluments of the petitioners admittedly are to be paid by RRDA even while their services are placed under the Directorate of Municipal Administration, a wing of Urban Development Department.

22. In a case of foreign service as defined in Rule 17, it has been held to mean a service in which a Government servant receives his substantive pay with the sanction of the Government from any other source other than the revenues of the Government of India or a State.

Admittedly the petitioners are to be paid their salaries and emoluments from the fund of RRDA.

23. In the wake of aforesaid legal position, it is also not factually in dispute that earlier also such deputation have been made of employees of RRDA under the Urban Development Department.

24. Ordinarily, when the services of an employee is transferred to a foreign service, the requirement of consent of the employee has been held to be necessary, as the employee is required to know his rights and privileges in the deputation post. In the case of the petitioner as per proviso to Rule 267(a), no consent of the employees is required, as RRDA is a body incorporated and is wholly and substantially controlled by the State Government.

25. The reliance of the petitioners upon the judgment rendered by Hon"ble Supreme Court in the case of [State of Punjab and Others Vs. Inder Singh and Others](#), is therefore misplaced. The proposition of law laid by Hon"ble Apex Court at para 18 of the said judgment is well settled. In the said case, the relevant Punjab Police Rules framed under the Police Act, 1861, whereunder interpretation. The services of the said employees, who were initially appointed as constables in the police Department were later deputed to the Criminal Investigation Department of Punjab Police. During the course of their deputation, they had earned promotions on ad hoc basis and reached the rank of ad hoc Sub-Inspectors. After a long time, they were sought to be repatriated to their parent department and when they were to go back, they were to work either as Constables or Head Constables. The said employee had remained in deputation from 1969 in C.I.D. and was repatriated in 1990 to the Police Department after he had earned promotions to the rank on ad hoc sub inspector.

26. The Hon"ble Supreme Court after considering the relevant Punjab Police Rules considered the question relating to the right of a deputationist and held that it was really harsh on the part of the employer to send the employee back after they had served C.I.D. for a number of years in higher rank though on ad hoc basis and now when they go back, they have to work either as Constables or Head Constables.

27. In the present case, as has been found in the earlier part of the judgment, the proviso to Rule 267(a) clearly indicates that the said Rule shall not apply to the case

of the petitioner being employee of RRDA, a body corporate which is wholly or substantially owned or controlled by the Urban Development Department, Government of Jharkhand. In the case of Indra Narayan Jha (supra), it has earlier been held that there is no requirement of consent as per Rule 267(a) in case of deputation to similar body like MADA which is wholly and substantially controlled by the State Government. In the aforesaid facts and circumstances and the reasons discussed hereinabove, this Court does not find any infirmity in the impugned orders requiring interference by this Court. The writ petitions being devoid of any merit, and are accordingly dismissed.